

**STATE OF DELAWARE**  
**PUBLIC EMPLOYMENT RELATIONS BOARD**

IN THE MATTER OF:

INTERNATIONAL BROTHERHOOD OF ELECTRICAL	:	<b>DECISION AND ORDER</b>
WORKERS, LOCAL 2270 (IBEW),	:	<b>OF DISMISSAL</b>
	:	
and	:	Representation Petition
	:	<u>No. 13-11-930</u>
DELAWARE TRANSIT CORPORATION.	:	(CERTIFICATION)

**RE: Service and Maintenance Supervisors**

APPEARANCES

*Frank Gentry, President, IBEW Local 2270*

*Aaron Shapiro, SLREP, for DTC*

**BACKGROUND**

The State of Delaware is a public employer within the meaning of §1302(p) of the Public Employment Relations Act, 19 Del.C. Chapter 13 (PERA). The Department of Transportation (DOT) is an agency of the State. The Delaware Transit Corporation (DTC) is a division of DOT.

The International Brotherhood of Electrical Workers, AFL-CIO, CLC (“IBEW”) is an employee organization within the meaning of 19 Del.C. §1302(i) and has as one of its purposes the representation of public employees in collective bargaining. Local 2270 is an affiliate of the IBEW.

On or about November 12, 2013, IBEW filed a Petition for Bargaining Unit Determination and Certification of Exclusive Bargaining Representative with the Delaware Public Employment Relations Board (“PERB”), seeking to create and represent

a bargaining unit comprised of:

Service Supervisors, working foremen and all non-union supervisors state-wide, to exclude management employees.<sup>1</sup> *IBEW Petition*

The petition was accompanied by a number of authorization cards in support of representation by the IBEW, signed by employees holding positions in the proposed bargaining unit.

On or about November 20, 2013, DTC filed its response to the IBEW petition, clarifying the position titles in issue. It asserted that the positions are ineligible for representation because they are statutory supervisors:

... The Maintenance Supervisors (including Working Foreman) and the Service Supervisors (including Dispatchers, Street Supervisors and Schedulers), no matter where they are located or which operational group they are assigned to (Fixed Route or Paratransit), are all statutory supervisors as defined in 19 Del.C. § 1302(s) and relevant PERB decisions. These positions are responsible to fulfill one or more of the required statutory responsibilities: “hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such actions. . .” The attached job descriptions clearly identify that incumbents are expected to exercise supervisory authority in one or more of these areas. *DTC Response to Petition, 11/20/13.*

The employee list provided by DTC was used to verify the petition was properly supported by at least thirty percent (30%) of the employees in the petitioned-for bargaining unit.

A public hearing was convened on January 6, 2014 which continued to a second day on January 28, 2014, in order to allow the opportunity for the parties to create a factual record on which a determination can be made as to the eligibility for representation of Service Supervisors and Maintenance Supervisors employed by DTC,

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<sup>1</sup> The State clarified the correct position titles in its response to the petition: Service Supervisor and Maintenance Supervisor.

and if necessary, the appropriateness of the proposed bargaining unit as required by 19 Del.C. §1310(d).

This decision results from the record thus created by the parties before the close of the record on January 28, 2014.<sup>2</sup>

### **FACTS**

Delaware Transit Corporation is an operating division of the Delaware Department of Transportation which provides public transportation services statewide. DTC provides both fixed route and paratransit service. Fixed route service is well-established and most extensive in New Castle County. Fixed route service is also provided to cover the greater Dover area, intercounty service and seasonal service to resort areas. Statewide paratransit service is a reservation based system. Customer reservations are organized daily into routes which are assigned to paratransit operators.

The fixed route operation in northern New Castle County (originating in and around Wilmington) was the initial public transportation system in Delaware. As such, it has evolved from a privately held company to a municipal operation and ultimately to part of the current state operated system under DTC. Employees of this original organization have been represented for purposes of collectively bargaining since before it evolved into a public organization. Fixed route supervisors and foremen in the northern district are and have historically been represented by OPEIU Local 32. Fixed route and paratransit operators statewide are represented by ATU Local 842, as are maintenance employees in the northern district. Paratransit Service and Automotive technicians

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<sup>2</sup> The decision in this matter has been delayed due to the pending work load of the Public Employment Relations Board and does not result from any delay by the parties.

statewide are represented by IBEW Local 2270.<sup>3</sup>

The 32 Service Supervisor and 8 Maintenance Supervisor positions at issue in this petition are employed by DTC in the following operational groups:

	# Chief Paratransit Supervisor	# Service Supervisors	# Full-time Operators	# Part-time Operators
NCC Paratransit Operations	1	13	169	10
Kent County Paratransit Operations	1	2	68	
Sussex County Paratransit Operations	1	8	74	
Mid-County Fixed Route Operations	1	2	(not provided)	(not provided)
Kent County Fixed Route Operations (includes seasonal resort operations which employs an additional 31 fixed route operators)	1	7	35	4

	# District Managers	# Asst. District Managers	# Maint. Supervisors	# Auto Techs	# Service Techs
NCC Maintenance Operations <sup>4</sup> (DART III paratransit)	1	1	4	7	4
Kent/Sussex Maintenance Operations	1	1			
Kent County Facility			2	7	4
Sussex County Facility			2	4	2

*State Exhibit 1.*

The Job Description for the Service Supervisor position<sup>5</sup> summarizes the job duties:

The Service Supervisor is responsible for the coordination and

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<sup>3</sup> During the processing of the instant representation petition, the bargaining unit of Automotive and Service Technicians was modified to also include Automotive Parts/Inventory Control Specialists. Representation Petition 14-09-972.

<sup>4</sup> DTC Maintenance Operations Manager Joe Patson testified the North District Maintenance Manager and Assistant Maintenance Manager oversee maintenance on both fixed route and paratransit operations. Only the Maintenance Supervisors on the paratransit side (DART III) are at issue in this petition.

<sup>5</sup> Joint Exhibit 1, Paygrade 13, adopted September 21, 2001.

direction of an effective, efficient transit system, including the assignment and supervision of all full- and part-time operators within the assigned geographical area or district, including development of schedules and manifests for all full- and part-time operators based on customer needs (trip requests), available resources, and DTC policies and procedures, within the defined user eligibility mandate of the Americans with Disabilities Act (ADA) and all applicable State of Delaware mandates. Specific responsibilities include issuing work and vehicle assignments; schedule development and schedule revision in response to changing service requirements; record and time keeping and review; administration of Collective Bargaining Unit provisions with regard to work assignments, attendance, service operations, discipline, etc.; knowledge of contracted services performance standards; accident investigation techniques; payroll procedures; CAD/AVL communication procedures; farebox and cash turn-in procedures. The Service Supervisor position operates on multiple shifts that span a broad service day. Must possess a valid Class B Commercial Driver's License with Passenger and Airbrake endorsements. The position reports to the Chief Dispatch Supervisor of the applicable district...

Exercise of Discretion:

The Service Supervisor operates with a body of generally known and accepted techniques and approaches. Responsibility for supervision of all full- and part-time drivers, within assigned areas, dictates a high degree of integrity and confidentiality be maintained. As the initial point of contact in the event of an operations emergency on the street, the incumbent's judgment will play an important role in successful resolution. Discretion is also vital in contacts with outside client servicing agencies. *Joint Exhibit 1*

The Service Supervisor job description also lists under "Skills: Knowledge-Based":

The Service Supervisor must have working knowledge of the operation and supervisory functions necessary to meet the service requirement of a transit system. The ability to interpret and apply collective bargaining terms and agreements is essential...

The Job Description for the Maintenance Supervisor position<sup>6</sup> summarizes the job duties:

The Maintenance Supervisor is responsible for the safe and efficient operation of a DTC industrial work facility. The incumbent is responsible for the direct supervision of maintenance

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<sup>6</sup> Joint Exhibit 2, Paygrade 12, adopted March 1, 1996, last modified April 17, 2000.

personnel, assists in the preparation of daily/weekly maintenance pre-plan, prepares and maintains accurate records, and controls the use of assets to achieve quality production levels. Specific responsibilities include scheduling, directing, and instruction; insuring accurate and timely input of information into monitoring and analysis reports; reviewing consumption reports, road calls, work orders, and Operator defect reports and preparing appropriate work orders from defect reports; assisting in determining minimum/maximum stock level requirements and reviewing requisitions from inventory against appropriate work orders; supervising issuance and control of company-owned tools, equipment, and supplies; and performing maintenance and repair functions on vehicles to supplement production of maintenance personnel. The incumbent must insure compliance with established policies and procedures, with particular emphasis on safety; inspect work area for cleanliness, inoperable equipment, and problem areas; and prepare and submit maintenance accident reports including estimated repair costs. Duties require a valid Commercial Driver's License and the ability to lift 50 pounds as required during regular job performance. The position reports to the District Maintenance Manager...

Exercise of Discretion:

The Maintenance Supervisor is responsible for directing the Maintenance workforce to effectively and safely achieve daily production levels. Although much of the maintenance work will be performed within areas defined through manufacturers and/or DTC specifications and procedures and require relatively little judgment, the Maintenance Supervisor will encounter situations that call for higher levels of decision making. Discretion is continually required in directing the diagnosis and repair of malfunctions within a large and intricate body of mechanical systems. The incumbent must know when to make judgments and when to refer them to higher levels for resolution. *Joint Exhibit 2.*

**ISSUES**

- 1) ARE THE POSITIONS OF SERVICE SUPERVISOR AND MAINTENANCE SUPERVISOR EMPLOYED BY DTC "SUPERVISORY" WITHIN THE MEANING OF 19 DEL.C. §1302(s), AND THEREFORE, INELIGIBLE FOR REPRESENTATION FOR THE PURPOSES OF COLLECTIVE BARGAINING UNDER THE PUBLIC EMPLOYMENT RELATIONS ACT?
- 2) IF NOT, IS THE PROPOSED BARGAINING UNIT OF SERVICE SUPERVISORS AND

MAINTENANCE SUPERVISORS APPROPRIATE WITHIN THE MEANING OF 19 DEL.C.

§1310(d)?

### **APPLICABLE STATUTORY PROVISION**

“Supervisory employee” means any employee of a public employer who has the authority, in the interest of the public employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such actions, if the exercise of such authority is not [of] a merely routine or clerical nature, but requires the use of independent judgment. 19 Del.C. §1302(s).

In making its determination as to the appropriate bargaining unit, the Board or its designee shall consider community of interests including such factors as the similarity of duties, skills and working conditions of the employees involved; the history and extent of the employee organization; the recommendations of the parties involved; the effect of overfragmentation on the efficient administration of government; and such other factors as the Board may deem appropriate. The Board or its designee shall exclude supervisory employees from all appropriate units created subsequent to September 23, 1994. 19 Del.C. §1310(d).

### **PRINCIPAL POSITIONS OF THE PARTIES**

#### International Brotherhood of Electrical Workers:

The IBEW argues the Service and Maintenance Supervisors it seeks to represent are not statutory supervisors within the meaning of 19 Del.C. §1302(s). It asserts these employees do not have the authority to hire, fire, transfer, suspend, lay-off, recall or promote other employees. They also do not have authority to adjust grievances and they do not have independent authority to impose discipline on other employees. These positions do not exercise independent judgment, and all decisions are made by management and simply passed through the Service and Maintenance Supervisors. IBEW concludes these employees perform merely clerical functions by following

established policy in which they have no voice in developing.

It asserts that the DTC supervisors who have this actual authority are already represented in a separate bargaining unit represented by OPEIU Local 32.

DTC:

DTC asserts the Service and Maintenance Supervisors positions are first-line managers and supervisors. They are directly responsible for assigning work and directing employees in completing operational tasks including scheduling and dispatching fixed route and paratransit operators; investigating street incidents and accidents; and assigning and directing maintenance and repair work on DTC vehicles. It also asserts these positions have authority to implement and effectively recommend discipline for subordinate employees.

The PERA expressly requires PERB to “...exclude supervisory employees from all appropriate units created subsequent to September 23, 1994. 19 Del.C. §1310 (d) Consequently, because these positions are statutory supervisors within the meaning of 19 Del.C. §1302(s) (in that they are directly responsible for assigning, directing and disciplining other employees) they are excluded from the definition of public employee and are not eligible to be represented.

The petition, DTC asserts, must therefore be dismissed.

**OPINION**

The PERA excludes from its definition of public employee “supervisory employees”, provided, however, that any supervisory position included in a bargaining unit prior to September 23, 1994, continues to be included in the bargaining unit unless and until the unit is either decertified in accordance with 19 Del.C. §1310(b) or is



modified in accordance with procedures authorized by §1310(e).<sup>7</sup> 19 Del.C. §1302(o)(7). The PERA specifically requires that supervisory employees be excluded from all appropriate bargaining units created after September 23, 1994. 19 Del.C. §1310(d).

It is undisputed that DTC currently employs both Service Supervisors and Maintenance Supervisors in its North District Fixed Route operations (in New Castle County) who are and have been represented for purposes of collective bargaining by Office and Professional Employees International Union, AFL-CIO, Local 32 (OPEIU) since before September 23, 1994. This petition does not seek to extend that bargaining unit, but rather seeks to create a new bargaining unit of Service Supervisors and Maintenance Supervisors employed by DTC in Kent and Sussex Counties, as well as in Paratransit service. There is no overlap between these two groups of employees. The fact that a historical bargaining unit exists that represents employees performing similar functions has no impact on this decision.

Consequently, this petition must be processed pursuant to 19 Del.C. §1310(d):

- (d) In making its determination as to the appropriate bargaining unit, the Board or its designee shall consider community of interests including such factors as the similarity of duties, skills and working conditions of the employees involved; the history and extent of the employee organization; the recommendations of the parties involved; the effect of overfragmentation of bargaining units on the efficient administration of government; and such other factors as the Board may deem appropriate. The Board or its designee shall exclude supervisory employees from all appropriate units created subsequent to September 23, 1994.

Should these positions be determined to meet the supervisory definition in the statute, they are ineligible for representation and must be excluded because this petition seeks to create a new bargaining unit.

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<sup>7</sup> 19 Del.C. §1310(e) requires PERB to establish procedures for redefining or modifying a bargaining unit.

The Delaware PERB has held that both the supervisory definition and the exclusion of supervisory employees from eligibility for representation is similar to and is based upon §2(11) of the federal Labor Management Relations Act.<sup>8</sup>

PERB has adopted the NLRB's guidance in requiring that the burden of establishing supervisory status be met by the party asserting that such status exists.<sup>9</sup> The NLRB has consistently held, "that the mere use of a title or the giving of 'paper authority' which is not exercised does not make an employee a supervisor."<sup>10</sup> General assertions unsupported with specifics and contradicted by other evidence are not sufficient to meet the burden.

The Board has been careful to narrowly construe the supervisory definition to instances where the evidence is clear that a position has consequential supervisory responsibilities because a determination that a position meets the definition excludes those employees from exercising rights the General Assembly determined should be statutorily protected for public employees.<sup>11</sup>

PERB has adopted the following sequential supervisory analysis:

- 1) Does an employee in this position have the authority to engage in one or more of the twelve listed activities?
- 2) If so, does the exercise of this authority require the use of independent judgment?
- 3) Does the employee hold and exercise that authority in the interest of the public employer? *In RE: Kent County Paramedics*, Del. PERB, Rep. Pet. 04-08-447, V PERB 3235, 3240 (2005).

Implicit in assessing the individual facts of any petition to answer these questions is that

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<sup>8</sup> *In RE: State Police Communications Section & CWA*, Rep. Pet. 96-07-187, III PERB 1543, 1547 (1997).

<sup>9</sup> *In RE: Sussex County and CWA*, Rep. 07-02-557, VI PERB 3949, 3957 (2008).

<sup>10</sup> *North Miami Convalescent Home & Local 1115*, 224 NLRB 1271, 1272 (1976).

<sup>11</sup> *In RE: Internal Affairs Officer of WFD*, Rep. 95-06-142, II PERB 1387, 1397 (1996).

the requisite authority and responsibility must be a consequential requirement of the position.

The determination of supervisory status is highly fact-bound and must be made based on the evidence presented and record created by the parties. The statute requires a supervisory employee have and exercise authority in the interest of the employer in performing or recommending one or more of the following functions:

- Hire
- Transfer
- Suspend
- Lay-off
- Recall
- Promote
- Discharge
- Assign
- Reward
- Discipline
- Responsibly direct
- Adjust grievances

No evidence was presented in this case to support a determination that either Service Supervisors or Maintenance Supervisors have authority or responsibility to effectively recommend the hire, discharge, transfer, rewarding, lay-off, recall or promotion of operators or maintenance employees. DTC does, however, assert these positions are responsible for assigning work, directing subordinates in the performance of their work, and disciplining subordinates up to and including suspensions.

The summary of job duties and responsibilities of the Service Supervisors and Maintenance Supervisors at issue in this petition which follow are derived from a thorough review of the record created by the parties.

#### Service Supervisors

Service Supervisors are assigned primary responsibility to perform one of three functions, namely, dispatching, scheduling, and providing street supervision. All Service Supervisors are cross trained and may be required to perform any one or more of these functions.

Dispatchers are responsible for daily “live” oversight of transportation operations (either fixed route or paratransit) during their shift, primarily through radio contact with operators. They distribute time cards to operators when they arrive at the start of their shifts; visually insure operators who are reporting for duty are in compliance with DTC’s dress code; maintain radio contact and monitor the GPS location of all vehicles under their assigned control during the shift; require operators to submit complete and accurate manifest and fares at the end of their shifts; oversee the clocking out procedure for operators; may reassign routes and/or paratransit service to adapt for delays, accidents, maintenance issues and/or operator absences; and oversee the assignment and reporting of overtime assignments. Dispatchers are also responsible for maintaining accurate time records and for addressing late reports and absences, i.e., “misses”. During their shifts, operators are required to report any and all accidents and incidents which occur on their buses to the dispatcher. The dispatcher has the initial responsibility to triage the incident and may alert appropriate public safety authorities, dispatch a street supervisor to provide assistance and/or to investigate, direct a vehicle be sent to transport passengers or to complete the route, and is responsible to initiate other appropriate actions and responses.

A Service Supervisor may also function as a scheduler for paratransit operations. Schedulers are responsible to create the paratransit manifests for the following day based on advance demand for paratransit service. The manifest is a “document that’s produced the night before for the next day and basically what it is is a list of customer name, address, pick-up time, information about the customer and then where they’re going to be dropped off at and it’s their work for that day.”<sup>12</sup> The paratransit routes are then assigned to operators based on seniority. If operators have problems with their manifests or

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<sup>12</sup> Testimony of Paratransit Manager Margaret Webb, Day 1 Transcript, p. 23.

schedules, they direct their concerns and problems to the scheduler who has authority to revise or change the manifest. Schedulers also have authority to approve or deny operators' leave requests and may reassign a route to cover the absence of an operator.

The third function served by Service Supervisors is as a street supervisor. Street supervisors are responsible for observing daily operations, trouble-shooting, monitoring performance (i.e., timeliness of fixed routes) and responding to accidents and incidents as directed by the dispatcher. Street supervisors are dispatched to accident scenes to conduct preliminary investigations, assist the operator in completing an accident report, and transport the operator to post-accident drug and alcohol testing, where the street supervisor determines it is warranted.

The record establishes that Service Supervisors have the authority to assign and direct operators. A scheduler or dispatcher can revise paratransit routes or reassign a pick-up to another operator when there is a problem which causes the bus or van to be behind schedule (whether related to mechanical, traffic or customer problems). If there is a mechanical problem, a Service Supervisor can send out a maintenance team and can dispatch another vehicle and operator to pick up stranded passengers and/or complete the disabled vehicle's run. Service Supervisors can call operators in for overtime if they are short-staffed for scheduled runs and can hold operators over for involuntary overtime if necessary to ensure customers are transported as required. A Service Supervisor functioning as a dispatcher can direct a street supervisor to respond to an accident or other emergency, and can also direct a street supervisor to "trail" a vehicle or driver for purposes of better understanding delays or other problems. Service Supervisors work with Reservation Supervisors to address passenger related problems or issues in the paratransit operations. Testimony also established that Service Supervisors are involved

in the bid-run assignment process, in making effective recommendations for bid awards which are then forwarded to the Chief for final acceptance.

Service Supervisors are responsible to be familiar with the collective bargaining agreements which cover the operators for which they are responsible. It is undisputed that dispatchers are responsible for administering the “miss” policy.<sup>13</sup> The progressive disciplinary penalties for a “miss” are set forth in the negotiated collective bargaining agreement. Even though the level of discipline is set forth in a clear grid, the dispatchers are responsible to make an independent determination as whether an operator has, in fact, “missed”. Dispatchers are not required to consult with superiors before administering discipline for misses. The record also establishes Service Supervisors can be disciplined for failing to faithfully and fairly administer this policy.

The record also clearly establishes that Service Supervisors have authority to counsel operators and direct them to comply with operational and safety policies. If an operator declines or refuses to follow that direction or otherwise violates established rules, discipline is issued under the Service Supervisor’s signature. The fact that proposed discipline is first discussed with superiors does reduce the Service Supervisor’s responsibility to identify the infraction and to recommend the imposition of discipline.

*State Exhibits 2, 10.*<sup>14</sup>

Based on the record created by the parties at the time of the hearing, Service

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<sup>13</sup> Operators are required to call-in at least one hour before the start of their scheduled runs if they will be absent or late. If the operator fails to report for work on time, calls in late or otherwise violates the reporting requirements, they are charged with a “miss”.

<sup>14</sup> I note the IBEW challenged the disciplinary letters submitted as *State Exhibit 2* because they were not signed and were not authenticated by the named Service Supervisors. *State Exhibit 2* included 10 disciplinary letters issued by Service Supervisors between December 3, 2010 and December 9, 2013, including 3 written warnings and 7 disciplinary suspensions for infractions which included violating paratransit procedures, substandard job performance, failure to properly secure a wheelchair, leaving a customer at the wrong address, riding a wheelchair lift with a customer, failure to follow a dispatch directive, inappropriate behavior and language, running ahead of schedule, failure to report an incident, and making an unauthorized stop.

Supervisors are determined to be statutory “supervisory employees” within the meaning of 19 Del.C. §1302(s) as they exercise authority in assigning, disciplining and directing subordinates. Consequently, they are ineligible for representation for purposes of collective bargaining in the proposed bargaining unit.

### Maintenance Supervisors

Two witnesses testified concerning the responsibilities of Maintenance Supervisors, namely, the statewide Maintenance Operations Manager (who has held his position for eight years) and the Sussex County Maintenance Supervisor (who has held his current position<sup>15</sup> for approximately six months).

Maintenance Supervisors are the highest level positions in the three DTC maintenance shops involved in this petition<sup>16</sup> on a daily basis. The Operations Manager testified DTC maintenance facilities operate around the clock (24 hours), five days each week. Currently there are eight unrepresented Maintenance Supervisor positions. No Maintenance Supervisor is responsible for oversight of more than four Auto Technicians and two Service Technicians.

Testimony established Maintenance Supervisors assign work at the beginning of each shift after reviewing information on which vehicles could not or were not placed into service. Vehicle repairs are assigned to Automotive Technicians based on the nature and complexity of the required work and the skills and experience of the technician. The Maintenance Supervisor also receives all road calls for service and directs technicians to respond. He or she enters work orders into the DTC’s maintenance data system which is

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<sup>15</sup> The Maintenance Supervisor testified he has been employed by DTC for 19 years, spending the majority of his career as a Maintenance Technician.

<sup>16</sup> DART III (NCC Paratransit), Kent County (Dover), Sussex County (Georgetown).

used to track maintenance and repairs to individual vehicles, to develop vehicle maintenance schedules, and to direct technicians to respond to a reported mechanical problem on a vehicle which is in service. Maintenance Supervisors also exercise discretion in deciding whether a broken or malfunctioning part should be repaired or replaced. This information was not refuted by IBEW witnesses.

Both witnesses testified that because the shops are small and the employees work closely together, the issuance of formal discipline is unusual. The IBEW witness testified that during his brief tenure as a Maintenance Supervisor, he had disciplined two subordinate employees, stating “one [was a] sit down and one was put to paper.” He testified an incident resulted in a written warning being issued over his signature. Upon learning an oil spill had been discovered in or around his shop, he approached one of his technicians and asked him if he knew anything about the spill. The technician responded that he was responsible, which the Maintenance Supervisor then reported to management. The written reprimand was prepared and forwarded to the Maintenance Supervisor for his review and signature. He testified he agreed with both the facts as set forth in the reprimand and that a reprimand was the appropriate discipline because the employee had received safety training on how to report and handle oil spills. The Maintenance Supervisor also testified he personally presented the employee with the disciplinary notice.

The Maintenance Supervisor job description lists “working knowledge of supervisory functions” as a required skill, but also requires incumbents have skill in repairing, testing, diagnosis and removal/installation of various mechanical units, assemblies and sub-assemblies involved in industrial vehicle maintenance. The record establishes that Maintenance Supervisors spend a significant amount of their working



hours performing repair and maintenance work. That does not, however, diminish the fact that they are also responsible for assigning and directing the work of Automotive and Service Technicians who report to them. While there is no dispute that discipline in the maintenance shops are less frequent, the record establishes that when it is necessary, Maintenance Supervisors have the responsibility to investigate, report, discuss, sign off, and deliver discipline to their subordinates.

For these reasons, Maintenance Supervisors are determined to be statutory “supervisory employees” within the meaning of 19 Del.C. §1302(s), because they have authority and responsibility to assign and direct all maintenance work in the shops and on the road and have authority to effectively recommend and implement discipline, when necessary. Consequently, they are ineligible for representation for purposes of collective bargaining in a new bargaining unit created after September 23, 1994, under the PERA.

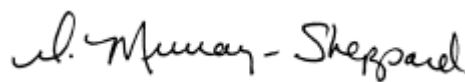
### **DECISION**

Based upon the record created by the parties and the specific circumstances unique to this case, there is persuasive support to conclude that Service Supervisors and Maintenance Supervisors employed in the Delaware Transit Corporation are “supervisory employees” within the meaning of 19 Del.C. §1302(s). Consequently, they are ineligible for representation for purposes of collective bargaining.

WHEREFORE, this petition is hereby dismissed.

IT IS SO ORDERED.

DATE: April 2, 2015



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DEBORAH L. MURRAY-SHEPPARD  
Executive Director  
Del. Public Employment Relations Bd.